

Commonwealth Of Kentucky

Court Of Appeals

NO. 2000-CA-002582-MR

GARY LYNN GILVIN

APPELLANT

v. APPEAL FROM MORGAN CIRCUIT COURT
HONORABLE SAMUEL LONG, JUDGE
ACTION NO. 00-CI-00089

GEORGE MILLION, WARDEN

APPELLEE

OPINION
AFFIRMING
** ** * * * * *

BEFORE: KNOPF, McANULTY, AND TACKETT, JUDGES.

McANULTY, JUDGE: The appellant, Gary Gilvin, appeals from an order of the Morgan Circuit Court dismissing his petition for declaratory judgment. Gilvin alleges that constitutionally defective procedures were used during his prison disciplinary hearing. We agree that dismissal of the appellant's action was appropriate and thus affirm.

On February 13, 2000, Gilvin was charged with a Category VII, Item 1, Inchoate B, violation of Corrections Policy and Procedure, "soliciting another or others to commit the offense of assault or physical action against an employee" ("CPP 15.2"). Gilvin received a copy of the incident report on the

same day. The report stated that a thorough investigation had revealed that Gilvin had previously expressed his intent to assault or finance the assault of an employee of the Eastern Kentucky Correctional Complex ("EKCC"). On February 13, 2000, Gilvin was formally charged with a violation of CPP 15.2. The appellant subsequently entered a plea of not guilty.

On February 17, 2000, Gilvin was brought before the Prison Adjustment Committee ("Committee"). Basing their decision on information supplied by a confidential informant, Gilvin was found guilty and sentenced to 180 days of disciplinary segregation. Gilvin filed a petition for declaratory judgment in the Morgan Circuit Court to obtain an immediate release from segregation and an award of \$30,000 in compensatory and punitive damages. Gilvin's petition was dismissed by the circuit court on April 28, 2000. Gilvin then filed a motion for a belated appeal of the circuit court's judgment in this Court on November 11, 2000. This motion was subsequently granted on January 19, 2001. However, after Gilvin's motion to reconsider was denied by the circuit court, this appeal followed.

On appeal, Gilvin contends that the Committee violated his due process rights. More specifically, the appellant alleges that the Committee failed to make a written determination that the information supplied by a confidential informant was trustworthy. Before considering the appellant's claim, however, we must first make a threshold determination of whether Gilvin's segregation deprived him of a constitutionally protected liberty interest.

A liberty interest protected by the Fourteenth Amendment is implicated only by the Constitution or a state law or regulation. Mahoney v. Carter, Ky., 938 S.W.2d 575, 576 (1997) citing Beard v. Livesay, 798 F.2d 874, 875 (1986). It is well established that disciplinary segregation involves the deprivation of a state-created liberty interest only if the segregation imposes an "atypical and significant" hardship on the inmate "in relation to the ordinary incidents of prison life." Jones v. Baker, 155 F.3d 810, 812 (1998) citing Sandin v. Conner, 515 U.S. 472, 483, 132 L. Ed. 2d 418, 115 S.Ct. 2293 (1995). Moreover, a disciplinary segregation without regard to duration does not involve the type of "atypical and significant" hardship protected by the Fourteenth Amendment. Jones at 812.

Although Gilvin spends much of his brief contesting the sufficiency of the evidence relied upon by the Committee, Gilvin has neglected to show that his segregation was "atypical and significant." Id. Gilvin was found guilty of the institutional offense of assault or otherwise financing such an assault against an EKCC employee. As a result of his misconduct, Gilvin was segregated from the general prison population for a period of 180 days. Under Sandin, segregation periods as long as two and half years have been deemed constitutional. See Jones v. Baker, 155 F.3d 810 (6th Cir. 1998). Thus, even if Gilvin had asserted that his segregation had deprived him of a constitutionally protected liberty interest it would be difficult to find that Gilvin's punishment was such that the due process protection of the Fourteenth Amendment has been implicated.

Gilvin is correct in his assertion that due process does afford a prisoner certain minimal procedural safeguards before disciplinary action may be taken against him. As articulated by the United States Supreme Court, these safeguards include: "(1) advance written notice of the charges against him or her; (2) an opportunity to call witnesses and present documentary evidence, provided that to do so will not jeopardize institutional safety or correctional goals, before a sufficiently impartial hearing board; (3) a written statement by the fact finder of the evidence relied upon and reasons for the disciplinary action taken." Hughes v. Rowe 449 U.S. 5, 9, 66 L.Ed. 2d 163, 170, 101 S.Ct. 173, 176 (1980) citing Wolf v. McDonnell 418 U.S. 539, 41 L.Ed. 2d 935, 94 S.Ct. 2963 (1974). Gilvin's complaint on appeal rests with the Committee's written determination that the information supplied to it by a confidential informant was untrustworthy.

In order to satisfy the procedural rigors of due process, a prison disciplinary committee must only make a good faith determination that any information supplied by a confidential informant is reliable. Gable v. Wilson, 577 F. Supp. 219, 220 (W.D. Ky. 1983). However, the verification procedure need not be comprehensive, but rather need only include some reference to verification. Id. Gilvin was found guilty based on the statements of a confidential informant. The disciplinary report form verifies that both the reporting officer and the Committee found the information provided by the informant to be reliable. Thus, we find that the reliability and

trustworthiness of the informant was sufficiently verified by the Committee.

The fundamental fairness guaranteed by the Due Process Clause of the Constitution requires courts to set aside the decision of a prison administrator only when there was no factual basis for the decision. Superintendent, Mass. Correctional Institution at Walpole v. Hill, 472 U.S. 445, 456, 86 L.Ed. 2d. 356, 365, 105 S.Ct. 2768, 2774 (1985). Indeed, "prison disciplinary proceedings take place in a highly charged atmosphere, and prison administrators must often act swiftly on the basis of evidence that might be insufficient in less exigent circumstances." Id. An appellate court, then, may not disturb a decision reached by a prison disciplinary body so long as "some evidence" exists to support the body's decision. Hill at 455-56; Smith v. O'Dea, Ky. App., 939 S.W.2d 353, 358 (1997). In the case at bar, the Committee has met this standard by basing its decision on information provided by a confidential informant. Moreover, this information was properly deemed trustworthy both by the reporting officer and the Committee. Therefore, Gilvin's due process rights have not been violated.

For the foregoing reasons, the order of the Morgan Circuit Court is affirmed.

ALL CONCUR.

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